

VZCZCXRO7221
PP RUEHDBU RUEHLN RUEHVK RUEHYG
DE RUEHAST #0032/01 1090530
ZNR UUUUU ZZH
P 190530Z APR 06
FM USOFFICE ASTANA
TO RUEHC/SECSTATE WASHDC PRIORITY 0104
INFO RUEHTA/AMEMBASSY ALMATY PRIORITY 0098
RUCNCIS/CIS COLLECTIVE
RUEHBUL/AMEMBASSY KABUL 0016
RUEHVEN/USMISSION USOSCE 0042
RUEHNE/AMEMBASSY NEW DELHI 0004
RUEHIL/AMEMBASSY ISLAMABAD 0005
RUEHAST/USOFFICE ASTANA 0106

UNCLAS SECTION 01 OF 03 ASTANA 000032

SIPDIS

SIPDIS

DEPARTMENT FOR G/TIP(MHALL), SCA/CEN(JMUDGE), INL, DRL, AND PRM
PLEASE PASS TO USAID

E.O. 12958: N/A

TAGS: [ASEC](#) [ELAB](#) [KCRM](#) [KFRD](#) [KWMN](#) [PHUM](#) [PREL](#) [PREF](#) [PGOV](#)

SMIG, KZ

SUBJECT: KAZAKHSTAN ENACTS LONG-AWAITED ANTI-TRAFFICKING AMENDMENTS

ASTANA 00000032 001.2 OF 003

¶1. On March 2, President Nazarbayev signed into law a comprehensive set of anti-Trafficking in Persons amendments ("TIP amendments") drafted by an inclusive interagency anti-trafficking Working Group. The TIP amendments strengthen anti-trafficking provisions within the criminal code, the code of criminal procedure, the administrative code, and a presidential decree. Drafted through a transparent interagency process that included non-governmental stakeholders, the TIP amendments were the key achievement under the 2003-2005 National Plan of Action against Trafficking in Persons (2003-2005 "National Plan"), and will provide a solid legal basis for additional progress under the 2006-2008 National Plan.

BACKGROUND

¶2. The TIP Amendments enacted on March 2 represent the culmination of a process that lasted more than two years. Starting in 2004, the Ministry of Justice has led an interagency working group focused on addressing problems related to trafficking in persons, as prioritized by the National Plan of Action for 2003-2005 and its successor. The working group includes representatives of the Ministries of Internal Affairs (MVD); Foreign Affairs (MFA); Labor and Social Welfare(MOL); Education and Science(MOES); and Culture, Information and Sports (MCIS). Also represented are the National Security Committee (KNB), which supervises the Border Guards; the office of the Procurator General (PGO); and the National Commission on Family and Women. All of these ministries and agencies have responsibilities for combating trafficking. The OSCE center in Almaty and from the International Organization for Migration (IOM) contributed expert advice on international laws and standards. NGOs were represented by the Kazakhstan International Bureau of Human Rights (KIBHR), a national legal network, and from the Union of Crisis Centers, an IOM-affiliated network of TIP NGOs. Post was invited to observe each meeting. Though the drafting process was at times slow, it was thorough. The resulting amendments will improve dramatically the legal basis for prosecutions, and additional provisions will improve protection for foreign victims and help prevent Kazakhstanis from being trafficked abroad.

SPECIFIC PROVISIONS

13. The amendments affect six articles in the Criminal Code: article 113 (organ and tissue harvesting); article 125 (kidnapping); article 126 (illegal restriction of freedom, constructive kidnapping); article 128 (trafficking in persons, recruitment for exploitation); article 133 (trafficking of under-aged persons); and article 175-1 (illegal harvest of organs or tissue of a human corpse), which was expanded by new article 275-1. Non-substantive amendments to the code of criminal procedure integrated these changes into the criminal code. Article 56, a new Administrative Code provision, provides for protection of TIP victims from deportation. An amendment to Article 394 excludes TIP victims from penalties for illegal immigrants. Additional changes to the Administrative Code integrate substantive amendments into existing implementation provisions. A final amendment applies to the presidential decree, "On the legal status of foreign citizen in the Republic of Kazakhstan." The most significant changes are discussed below

14. Criminal Code definitions: New definitions added to criminal code articles 125, 126, 128, and 133 clarify that illegal "exploitation" includes not only sexual exploitation, but also forced labor exploitation, and any actions consistent with forcing human slavery or bondage. An amendment to Article 126 also adds language to include as victims of constructive kidnapping (i.e. forcible confinement) those held due to involuntary financial or other dependence. Although Articles 125 and 126 are not strictly trafficking provisions as defined by the U.S. Trafficking Victims Protection Act (TVPA), they provide law enforcement and procurators with additional criminal charges that would apply to most trafficking scenarios.

ASTANA 00000032 002.2 OF 003

15. Criminal Code Articles 128 and 133: Article 128 was amended to remove the heavily-criticized "deception" provision that previously required that a victim be unaware of the type of work he or she was going to do; in practice, many victims were aware of the type of labor they would undertake, but not the involuntary bondage nature of their relationship with the trafficker. (Note: Because Article 133 applies to minors, the deception provision was not a factor. End note.) Both articles were amended to expand the actions that constitute trafficking to include not only recruitment of victims, but also sale of, purchase of, transportation of, and transfer of victims. Any act facilitating trafficking by hiding or providing shelter for victims, or undertaking any other commercial transaction that contributes to exploitation, were also prohibited. Subsection 2 of both articles lists aggravating circumstances for sentencing: conspiracy related to trafficking (other than by organized crime syndicates); repeated offenses; the use or threat of deadly force against a victim; the use of weapons against victims; trafficking of a pregnant victim; trafficking of multiple victims; deception of the victim or abuse of trust; abuse of official position to traffic victims; abuse of the victim's financial or other dependence on the trafficker to maintain the victim's compliance. Absent aggravating circumstances, each charge under article 128 is punishable by up to five years' imprisonment. With aggravation, sentences under Article 128 range from five to seven years per count. Under Article 133, where a victim is a minor, each charge is subject to five to seven years' imprisonment, or seven to ten year's sentence with aggravating circumstances.

16. Articles 128 and 133, continued: A third subsection of both articles provides for more serious charges for international

trafficking. Each instance of trafficking victims into, through, or out of Kazakhstan would face a seven to ten year sentence under Article 128. International trafficking of minors would be subject to a ten to twelve year sentence under Article 133. Finally, Subsection 4 specifies that any trafficking case where a victim dies from negligence or faces other "grave consequences" resulting from having been trafficked, or where a trafficking case involves an organized crime syndicate, would be subject to seven to fifteen years' imprisonment. The same circumstances would bring a twelve to fifteen year sentence under Article 133.

17. Administrative Code - Preventing trafficking: An amendment to Article 399 prohibits the use of deceptive advertising to recruit citizens of Kazakhstan to work abroad. The amendment applies equally to false statements and to withholding of material information.

18. Administrative Code and Presidential Decree- Protections for foreign victims: Article 56, a new section drafted with significant feedback from procurators and nongovernmental stakeholders, provides for immediate suspension of deportation proceedings where a potential deportee alleges that he or she has been the victim of a serious crime, including trafficking crimes. Deportation proceedings will not proceed until criminal investigations and prosecutions are completed. Under a related amendment to Article 396, trafficking victims are exempted from definitions of illegal immigrants. Accordingly, the presidential decree, "On the legal status of foreign citizens" was amended to classify foreign victims of trafficking as protected under the law and to accord them special temporary residence rights.

19. COMMENT: Although the TIP amendments as enacted do not include all the recommendations of the stakeholders, the key provisions remain. The TIP Amendments are significant not only because of the potential for improved government action to combat trafficking, but also because it is an unusual example of a successful, transparent interagency process. Government restructuring in the run-up to the December 2005 presidential elections resulted in changes in key personnel working on TIP in the Ministries of Justice and Internal Affairs, as well as the

ASTANA 00000032 003.2 OF 003

Procurator General's Office. (Note: With unfortunate timing, the leadership of IOM Almaty changed over as well- the office is currently operating with an acting director. End note.) Now that post-election changes have settled into place, passage of the TIP amendments represents an opportunity to re-energize the member agencies. Post is promoting these efforts at the highest levels. END COMMENT
TRACY